No. 88-499

Supreme Court, U.S.
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In The Supreme Court of the United States
October Term, 1988

PETER F. SHIELDS,
Petitioner,

vs.

PRODUCTION FINISHING CORPORATION,
Respondent,

and

FLAT ROCK METAL, INC.
Defendant.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

RICHARD K. WRAY
Attorney for Respondent
NATHANSON & WRAY
333 West Wacker Drive
Suite 330
Chicago, Illinois 60606
(312) 606-0771

American Reprographics Management, Inc.™ (312) 332-ARMI (800-999-6239)

26 pp

QUESTIONS PRESENTED

1. Does a state appellate court's application of the common law rule, that a fiduciary must make a full and fair disclosure and receive the consent of his principal before the fiduciary may act in his personal interest with respect to the subject matter of the agency, violate the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States?

2. Does the United States Supreme Court have jurisdiction to decide a purported constitutional issue neither addressed nor decided by the Michigan state courts below?

LIST OF PARTIES

Respondent, Production Finishing Corporation*, was the appellee in the proceedings before the Michigan Supreme Court, and was the appellant-cross-appellee in the proceedings before the Michigan Court of Appeals.

Petitioner, Peter F. Shields was one of the appellants before the Michigan Supreme Court and was one of the appellees-cross-appellants before the Michigan Court of Appeals.

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* The list of the parents, subsidiaries and affiliates of Production Finishing Corporation as required by Rule 28.1 is set forth in the Appendix hereto.

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BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

OPINIONS BELOW

The Michigan Supreme Court denied petitioner's application for leave to appeal without issuing any opinion. The opinion of the Michigan Court of Appeals is reported at 158 Mich. App. 479, 405 N.W.2d 171 (1987), *lv. denied,* 430 Mich. 859, 421 N.W.2d 903 (1988).

JURISDICTION

Petitioner purports to invoke the jurisdiction of this Court pursuant to 28 U.S.C. §1257(3). For the reasons stated in this brief, respondent challenges the claim of jurisdiction.

CONSTITUTIONAL PROVISION INVOLVED

The only constitutional provision allegedly involved in this case is Section 1 of the Fourteenth Amendment of the United States Constitution:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Nature of the Case

Production Finishing Corporation initiated this lawsuit against Peter F. Shields, the former president of Production Finishing, and Flat Rock Metal, Inc., a corporation formed by Shields. Production Finishing seeks damages or disgorgement of profits resulting from Shields' misappropriation of a corporate opportunity and his breach of fiduciary duties.

The claims arose from Shields' conduct in forming Flat Rock to acquire steel polishing equipment from Ford Motor Company and to perform polishing services for Ford. Shields had initially pursued these opportunities on behalf of and at the specific request of the board of

directors of Production Finishing. However, beginning in May 1981, while retaining the position of president of Production Finishing, Shields secretly and successfully undertook a plan to acquire the equipment and business for himself and his corporation, Flat Rock.

Proceedings in State Court

At trial, the jury returned a verdict in favor of defendants on the questions of theft of a corporate opportunity and breach of fiduciary duties. Production Finishing appealed and Shields cross-appealed the entry of summary judgment in favor of Production Finishing on a contract count which is not before this Court.

On March 16, 1987, the Michigan Court of Appeals ruled that, based on the undisputed evidence, "reasonable minds could not honestly disagree" that Shields had violated his fiduciary duties and misappropriated a corporate opportunity. *Production Finishing Corp. v. Shields,* 158 Mich. App. 479, 485, 405 N.W.2d 171 (1987). The Court of Appeals concluded that as a matter of law Production Finishing was entitled to judgment notwithstanding the verdict, and the case was ordered remanded for a trial on damages. Shields and Flat Rock filed a motion for rehearing, which was denied on June 3, 1987.

Shields and Flat Rock both sought leave to appeal to the Michigan Supreme Court. On March 22, 1988, that court denied the application for leave to appeal. Shields and Flat Rock filed separate motions for reconsideration, both of which were denied on June 28, 1988.

The first time Shields purported to raise any issue under the Constitution of the United States[1] was in his reply brief in support of his application for leave to appeal to the Michigan Supreme Court. Flat Rock did not raise the argument at any point, and it has not petitioned this Court for a writ of certiorari. No court has addressed the alleged constitutional issue.

Statement of Facts

Throughout the time relevant to this case, Production Finishing was engaged in the business of polishing sheets of steel. In April 1981, Production Finishing was the only company in the Detroit area which provided polishing services for steel to be used as bumpers by automobile manufacturers, which did not also provide services such as stamping or plating the steel. (Tr. April 30, 1984, pp. 151-152; May 1, 1984, p. 180; May 9, 1984, p. 138). At that time, there were two American automobile plants which still did their own bumper steel polishing. One of these was Ford's plant in Monroe, Michigan. The other was a Chevrolet plant. Those two companies were Production Finishing's principal target customers for future expansion in the event that either manufacturer stopped doing its own polishing. (Tr. May 2, 1984, p. 82; May 10, 1984, p. 13). At trial, Shields testified that it was important to Production Finishing to obtain the Ford business. The opportunity to do Ford's polishing was an opportunity within Production Finishing's principal line of business. (Tr. April 30, 1984, pp. 176, 180-181).

In early 1981, Ford's Monroe plant manager, Stanley Cronenwett, invited Production Finishing to provide

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[1] Indicative of the degree of care and attention devoted to the issue by Shields' counsel in the state court, he purported to raise an issue of violation of the Due Process Clause of the Fifth Amendment rather than the Fourteenth Amendment.

quotes for Ford's polishing. (Tr. April 30, 1984, p. 185). By mid-March of 1981, Production Finishing had learned that Ford was considering relying entirely on outside sources for bumper polishing. (Tr. April 30, 1984, p. 188). On April 20, 1981, Production Finishing, in a letter signed by Shields, quoted Ford prices for all of its bumper polishing work. (Tr. May 1, 1984, pp. 12, 17, 21).

The board of directors of Production Finishing met on April 29, 1981, and expressly instructed Shields to continue to investigate the Ford opportunity. (Tr. April 30, 1984, pp. 160-161). Shields testified at trial that at the time of the board meeting, the potential Ford business was understood to be a corporate opportunity of Production Finishing. (Tr. May 1, 1984, pp. 21-22).

Nevertheless, in the course of Shields' next meeting with Cronenwett, Shields asked what the plant manager would think of Shields taking the polishing business for himself. Mr. Cronenwett said that he would consider Shields' personal proposal. (Tr. May 2, 1984, pp. 33-35).

Cronenwett had expressed a reservation that if Ford's business went to Production Finishing, then Production Finishing would be "the only game in town". However, Shields never conveyed Cronenwett's concern to the board of directors of Production Finishing. (Tr. May 1, 1984, p. 35). Nor did Shields disclose the efforts he undertook in his own behalf to obtain the Ford business. (Tr. May 1, 1984, p. 56). Instead, he secretly undertook a series of meetings with Ford employees through which he negotiated and obtained a contract with Ford for Flat Rock. (Tr. May 1, 1984, pp. 51, 96, 130-133). All of these activities were undertaken by Shields while he retained his positions as the president and as a director of Production Finishing.

During that period, when the chairman of the board of Production Finishing inquired as to the status of the

efforts to obtain the Ford business for Production Finishing, Shields responded that "things were fine with the Ford prospect." (Tr. May 1, 1984, p. 68). The other directors of Production Finishing learned nothing of Mr. Shields' activities until after he had resigned. (Tr. May 2, 1984, p. 127).

Shields resigned from Production Finishing on August 20, 1981, effective on the same day on which he and Ford executed the contracts transferring the Monroe polishing equipment and Ford's business to Flat Rock Metal.

At trial Shields defended his theft of the corporate opportunity by claiming that Ford would have refused to deal with Production Finishing.

REASONS FOR DENYING THE WRIT

A. No Constitutional Issue is Involved Where the Ruling of the Michigan Court of Appeals Neither Expressly Nor Implicitly Adopted any Irrebuttable Presumption.

Petitioners' entire argument is founded on the erroneous assumption that the ruling of the Michigan Court of Appeals in this case adopted an irrebuttable presumption. Such an argument is based on either a fundamental misunderstanding or an intentional distortion of the court's ruling. As conceived by Shields' counsel, the so-called presumption apparently would be that a corporate opportunity would be concluded to exist in every case in which a corporate fiduciary has failed to disclose an alleged refusal to deal. The court made no such holding.

The ruling of which petitioner complains consists of nothing more novel or controversial than the application of the general common law rules of fiduciary duties. These rules were well settled long ago, even before the numerous Michigan Supreme Court decisions from the early part of this century upon which the lower court based its ruling. See, *Production Finishing Corp. v. Shields,* 158 Mich. App. 479, 486-489, 405 N.W.2d 171 (1987).

1. The Corporate Opportunity Doctrine

It is well established that the principle sometimes referred to as the "corporate opportunity doctrine" is a corollary to the more general fiduciary duty owed by an officer or director to his corporation. Michigan courts, consistent with other American jurisdictions, have insisted upon strict adherence by a corporate fiduciary to his duties of loyalty and fairness. See, *L.A. Young Spring & Wire Corp. v. Falls*, 307 Mich. 69, 99-101, 11

N.W.2d 329, 340-341 (1943); *Battle Creek Foods Co. v. Kirkland,* 298 Mich. 515, 521-522, 299 N.W. 167, 169 (1941); *Bliss Petroleum Co. v. McNally,* 254 Mich. 569, 573, 237 N.W. 53, 55 (1931); *Heiden Realty Co. v. Brown,* 243 Mich. 579, 585, 220 N.W. 699, 702 (1928); *Michigan Crown Fender Co. v. Welch,* 211 Mich. 148, 159-160, 178 N.W. 684, 688 (1920); *Pikes Peak Co. v. Pfuntner,* 158 Mich. 412, 415, 123 N.W. 19, 20 (1909).

The fiduciary's duties have consistently been ruled to preclude his acquiring for himself a business opportunity which is within the line of business of the corporation which he serves. See, e.g., *Equity Corp. v. Milton,* 221 A.2d 494, 497 (Del. Supr. 1966); *Klinicki v. Lundgren,* 298 Or. 662, 695 P.2d 906, 918 (1985); *Kerrigan v. Unity Savings Ass'n.*, 58 Ill.2d. 20, 28, 317 N.E.2d 39 (1974); *L. A. Young Spring & Wire Corp. v. Falls,* 307 Mich. 69, 95, 11 N.W.2d 329, 339 (1943); *Energy Resources Corp. v. Porter,* 14 Mass. App. 296, 438 N.E.2d 391, 393 (1982).

As the court below observed, applying the line of business test to the present facts:

> There can be *no dispute* in this case that the potential purchase of Ford's polishing business, as well as the equipment, was, at least initially, a business opportunity which Production Finishing had an interest in and was actively pursuing.

Production Finishing Corp. v. Shields, 158 Mich. App. 479, 487, 405 N.W.2d 171 (1987) (emphasis added). Where the facts establishing the existence of a corporate opportunity are undisputed, and further where the court of appeals has concluded that the jury instructions given were erroneous, the jury's answer to a special interrogatory finding that no corporate opportunity existed, is meaningless.

However, the court of appeals' ruling that a corporate opportunity existed as a matter of law was not enough, standing alone, to decide this case. The court acknowledged that under certain circumstances a refusal to deal with the corporation, on the part of the party with whom the opportunity to do business existed, can give rise to an affirmative defense. It proceeded to consider what was necessary to establish that defense.

2. The Disclosure Requirement as an Element of the Affirmative Defense of Refusal to Deal

One of the basic tenets of fiduciary responsibility is that, in dealing with the affairs of his principal, the fiduciary must refrain from acting where his personal interest is involved, unless he first fully discloses all material facts and obtains the principal's consent. See, *Thomas v. Satfield Co.,* 363, Mich. 111, 117, 108 N.W.2d 907, 910 (1961); *Stephenson v. Golden,* 279 Mich. 710, 737, 276 N.W. 848, 858 (1937); *Michigan Crown Fender Co. v. Welch,* 211 Mich. 148, 159, 178 N.W. 684, 688 (1920). The court below expressly recognized this well established disclosure rule. It quoted language from the *Stephenson* decision setting forth the requirements of knowledge and consent by the principal as prerequisites to allowing self-dealing by an agent. *Production Finishing Corp. v. Shields,* 158 Mich. App. 479, 487, 405 N.W.2d 171 (1987). Because Production Finishing had no knowledge of Shields' self-dealing and did not consent, the Court concluded that Shields had breached his fiduciary duties.

The fact that the court adopted no presumption, conclusive or otherwise, in order to reach its decision, is apparent from the foregoing discussion. However, the lack of a presumption is even more clear when Shields' claim of refusal to deal is viewed as an affirmative defense. As noted by the court below, Production Fin-

ishing had proven its prima facie case when it established the existence of a corporate opportunity in its line of business. Shields then, in order to prove his affirmative defense, needed to establish three elements; (1) a refusal to deal on the part of Ford, (2) full and fair disclosure by Shields to Production Finishing regarding the alleged refusal, and (3) consent by Production Finishing to Shields proceeding in his own interest. Because it was undisputed that Shields had not disclosed either the alleged refusal to deal or his own efforts to claim the opportunity for his personal benefit, the court found it unnecessary to address the disputed issue of refusal to deal. There was no presumption that Ford would have dealt with Production Finishing. It was simply not necessary to consider that element of the affirmative defense where Shields had clearly failed to adduce evidence of the other elements of the defense. *Id.* at 489-490.

Well before the decision in the pending case, the law in Michigan, as well as every other jurisdiction which has considered the question, was that a fiduciary's failure to disclose all facts material to an alleged refusal to deal defeats that defense to a claim of theft of a corporate opportunity. See, e.g., *L. A. Young Spring & Wire Corp. v. Falls,* 307 Mich. 69, 102, 11 N.W.2d 329, 341 (1943); *Battle Creek Foods Co. v. Kirkland,* 298 Mich. 515, 299 N.W. 167, 174 (1941); *Imperial Group (Texas), Inc. v. Scholnick,* 709 S.W.2d 358, 363 (Tex. App. 1986); *Energy Resources Corp. v. Porter,* 14 Mass. App. 296, 438 N.E.2d 391, 395 (1982); *Kelly v. 74 & 76 West Tremont Avenue Corp.*, 4 Misc.2d 533, 537, 151 N.Y.S.2d 900 (1956). The Michigan court simply followed the established rule.

Shields had every opportunity to introduce evidence of disclosure and consent. His feeble argument that he made an adequate disclosure of his scheme by revealing it to one of his subordinates, whom he was attempting

to induce to leave Production Finishing along with him, was rejected out of hand by the court below. *Production Finishing Corp. v. Shields, supra*, 158 Mich. App. at 490.

B. There is No Denial of Due Process in the Application of the General Rules of Fiduciary Duties by the Michigan Court of Appeals

Not only is it the case that no "irrebuttable presumption" was adopted by the Michigan Court of Appeals, but the very doctrine upon which Shields attempts to rely is completely inapplicable. The concept that certain "irrebuttable presumptions" violate the Due Process Clauses of the Fifth or Fourteenth Amendments has been confined to a few decisions relating to the effect of specific statutory presumptions. This Court has never applied the principle to judicial decisions as opposed to legislatively creative presumptions. The concept that a statutory "irrebuttable presumption" constitutes a denial of due process was a notion followed in a few decisions of this Court in the early seventies. See, e.g., *Cleveland Bd. of Educ. v. La Fleur,* 414, U.S. 632, 646 (1974); *Vlandis v. Kline,* 412 U.S. 441, 446 (1973); *Stanley v. Illinois,* 405 U.S. 645, 657-58 (1972).

Even if we were to assume that the court's ruling was legislation and to further assume that the "irrebuttable presumption" analysis retained validity, the rule in question still would not offend due process. In upholding a theoretically analogous disclosure provision of the Truth in Lending Act against such a due process challenge, this Court reasoned:

> The rule was intended as a prophylactic measure; it does not presume that all creditors who are within its ambit assess finance charges, but, rather, imposes a disclosure requirement on all

> members of a defined class in order to discourage evasion by a substantial portion of that class.

Mourning v. Family Publications Service, Inc., 411 U.S. 356, 377 (1973). Likewise, the common law rule in the pending case merely requires those who seek to capitalize on corporate opportunities to disclose their actions so as to discourage evasion of their fiduciary duties.

On a more fundamental level, considered analysis of the cases upon which Shields attempts to rely has made it readily apparent that the rulings actually rest on an equal protection rationale. In each case, the objectionable aspect of a statutory provision was the arbitrary manner in which it classified individuals. Rotunda, Nowak & Young, *Treatise on Constitutional Law: Substance and Procedure* §17.6, p. 246 (1986). The use of irrebuttable presumption language has been characterized as a "conceptually confused" method of justifying independent judicial review of legislative classifications. *Id.* at 248. *La Fleur* and the cases leading up to it gave rise to a flurry of academic commentary criticizing the doctrine of "irrebuttable presumptions" under the Due Process Clause. *Id.* at 246, n.4. Since the time that *La Fleur* was decided in 1974, this Court has repeatedly rejected claims that various legislative classifications constitute irrebuttable presumptions. See, e.g., *United States v. Locke,* 471 U.S. 84, 98, 103 (1985); *Usery v. Turner Alcorn Mining Co.,* 428 U.S. 1, 22-24 (1976); *Weinberger v. Salfi,* 422 U.S. 749, 772 (1975).

The decisions in *Stanley, Vlandis* and *La Fleur* were expressly limited by the Court in *Weinberger v. Salfi,* 422 U.S. 749, 772 (1975). In that case, the Court upheld a statutory scheme against a due process challenge, noting:

> . . . appellees *are completely free to present evidence that they meet the specified require-*

> *ments;* failing in this effort, their only constitutional claim is that the test they cannot meet is *not so rationally related* to a legitimate legislative objective that it can be used to deprive them of benefits available to those who do satisfy that test.

Id. at 772 (emphasis added).

Assuming that this due process analysis were applicable to a judicial decision, it is clear that the ruling of the court of appeals in this case satisfies the *Weinberger* test. As discussed above, Shields had every opportunity to present evidence that he had disclosed the alleged refusal to deal to Production Finishing. Alternatively, Shields has failed even to argue that the disclosure requirement is not rationally related to a legitimate judicial objective. There can be no serious argument that requiring fiduciaries to make a full and fair disclosure of a purported refusal to deal before taking the corporate opportunity for their personal benefit is rationally related to the legitimate objective of requiring fiduciaries to live up to their obligations of loyalty and fidelity. The more than rational basis for the rule has been articulated as follows:

> For the reason that the firmness of a refusal to deal cannot be adequately tested by the corporate executive alone, it has not been favored as a defense unless the refusal has first been disclosed to the corporation. Without full disclosure, it is too difficult to verify the unwillingness to deal and too easy for the executive to induce the unwillingness.
>
> * * *
>
> The difficulty with the judge's reasoning is that the unalterability of Jackson's resolve can by

> no means be certain so long as Porter [the corporate officer], by keeping Jackson's position and his reasons for it a secret, never afforded ERCO [the principal] a chance to test it.

Energy Resources Corp. v. Porter, 14 Mass. App. 296, 438 N.E. 391, 393 (1982). It is, at a minimum, rational for the courts to take the position that such a speculative conclusion should not be allowed in the absence of disclosure which would provide a contemporaneous chance to test the purported unwillingness to deal.

For these reasons, without regard to whether or not the doctrine of "irrebuttable presumptions" retains validity today[2], it is clear that the present case could not under any reasonable interpretation run afoul of that doctrine.

C. This Court Lacks Jurisdiction to Decide a Purported Constitutional Issue Not Passed Upon by the State Courts Below.

At no time before the trial court, the Michigan Court of Appeals, or in his application for leave to appeal to the Michigan Supreme Court did Shields argue that any constitutional right was implicated by any of the issues raised in this case. Rather, in his reply brief, just before

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[2] The observations of Chief Justice Rehnquist in his dissent in *Toll v. Moreno*, 458 U.S. 28 (1982), reflect the commentators' skepticism regarding the viability of this line of due process analysis:

> There is legitimate doubt whether at this late date anything remains of *Vlandis v. Kline* but its lifeless words on the pages of these Reports. Such doubts, however, need not be resolved in this case.

Id. at 48.

the March 22, 1988 ruling of the Michigan Supreme Court denying his application for leave to appeal, Shields apparently recognized that the Court's decision was about to become final absent a petition for certiorari to the United States Supreme Court. However, no federal or constitutional question had been raised at any point in this proceeding by any party. Therefore, apparently grasping for straws, Shields included an entirely new argument in his reply brief before the Michigan Supreme Court. At that point, seven years into the case, Shields first proffered the argument that the requirement of disclosure was a violation of the Due Process Clause of the Fifth Amendment of the United States Constitution.[3]

Shields' application for leave to appeal and his motion for reconsideration were each denied by the Michigan Supreme Court without opinion.

Respondent now claims that this Court has jurisdiction over the pending matter pursuant to 28 U.S.C. §1257. In relevant part, that statute provides:

> Final judgments or decrees rendered by the highest Court of the State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By writ of certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

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[3] In his petition for writ of certiorari, Shields has changed his argument and now, for the first time, more appropriately relies on the Fourteenth Amendment.

The scope of jurisdiction of the United States Supreme Court under this provision has been clearly defined in several decisions. Perhaps most pertinent to the Court's ruling here is *Webb v. Webb,* 451 U.S. 196 (1981). In that case, the Court had granted certiorari, but then was forced to decline jurisdiction upon examining the record and learning that the asserted federal question had not been passed upon by the state supreme court. In dismissing the case, the Court observed:

> We note first that nowhere in the opinion of the Georgia Supreme Court is any federal question mentioned, let alone expressly passed upon. Nor is any federal issue mentioned by the dissenting opinion in that court. This Court has frequently stated that when "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this court can affirmatively show the contrary." *Street v. New York*, 394 U.S. 576, 582 (1969); [other citations omitted].

Id, 451 U.S. at 495-496. The Court emphasized that there are powerful policy considerations underlying the statutory requirements and Supreme Court Rule 21.1(h) requiring that federal challenges be presented first to the state courts.

> These considerations strongly indicate that we should apply this general principle with sufficient rigor to make reasonably certain that we entertain cases from state courts only where the record clearly shows that the federal issue has been properly raised below.

451 U.S. at 499.

Not only principles of comity but also very practical reasons, such as providing state courts with the opportunity to interpret their rules to avoid federal constitutional challenges or to clarify independent and adequate state grounds for determining the issue, provide a sound basis for strict enforcement of this rule. 451 U.S. at 500.

In *Webb,* the petitioner had raised the concept of "full faith and credit" at several points in the proceedings below, including the trial court. However, her failure to cite the United States Constitution, as opposed to making references to state law was fatal to her petition for certiorari.

Similarly, in the present case, Shields failed to identify any of his arguments as raising a federal question or a constitutional issue until after all of the issues in the case had been determined by the court of appeals and leave to appeal had been briefed before the Michigan Supreme Court. For these reasons, it is clear that this Court does not have jurisdiction over the purported constitutional issue.

Moreover, even if jurisdiction were present, none of the criteria for granting certiorari are present in this case. Supreme Court Rule 17.1 sets forth considerations governing review on certiorari. If petitioner could set aside the determinative jurisdictional facts that no question of federal law was decided by any court in this case, and that no question of federal law is presented by this case, certiorari should still be denied because the question raised is neither unsettled nor an important federal question which should be settled by this Court. See Supreme Court Rule 17.1(c). Thus, Shields has failed to make any showing that this case is appropriate for a grant of certiorari.

Conclusion

For these reasons, the petition for a writ of certiorari to the Supreme Court of Michigan should be denied.

DATED: Chicago, Illinois, October 21, 1988

Respectively submitted,

RICHARD K. WRAY
Attorney for Respondent
NATHANSON & WRAY
333 West Wacker Drive
Suite 330
Chicago, Illinois 60606
(312) 606-0771

APPENDIX

APPENDIX

Aluminum Coil Incorporated
Alumark Corporation
Alumark Transport Corporation
American Powdered Metals Company
AmeriMark Building Products, Inc.
Boulevard Travel Center, Inc.
Ceramic Engine Technology Corporation
Clark Bros. Metal Fabricators, Inc.
Clark Transport, Inc.
Eastern Realty Services, Inc.
Hastings Aluminum Corp.
Hastings Building Products, Inc.
Hastings Equipment Leasing Corp.
Homelife Building Products
Innovative Insurance Associates, Inc.
Laboratories Dominel, S.A.
Micro Fusion, Inc.
MidAmerica Extrusions Corporation
Plasmafusion, Inc.
Plasmafusion International, Inc.
Republic Building Products, Inc.
Republic Foil, Inc.
Starmark Corporation
Technology International, Ltd.
The Worldmark Group, Inc.
Transmark Leasing Corp.
Transmark Transportation, Inc.
Wolverine Coil Coating, Inc.
Wolverine Companies, Ltd.

World Equipment Leasing Corp.
World Realty Services, Inc.
Worldmark Asia, Ltd.
Wordmark Corporation
Worldmark Insurance Services, Inc.
Worldmark International Corporation
Worldmark Leasing Corporation
Worldmark Marine, Inc.
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Worldmark Materials Asia, Ltd.
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WorldSource Coil Coating, Inc.
WorldSource Industries, Inc.